



**UNITED STATES DEPARTMENT OF COMMERCE**  
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/821,025	03/19/97	BIJL	H 246152006900

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HM22/0721

EXAMINER

MARX, I

ART UNIT

PAPER NUMBER

1651

DATE MAILED: 07/21/99

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

**Advisory Action**Application No.  
**08/821,025**Applicant(s)  
**Bijl et al.**Examiner  
**Irene Marx**Group Art Unit  
**1651**

## THE PERIOD FOR RESPONSE: [check only a) or b)]

- a) ☐ expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☐ expires either three months from the mailing date of the final rejection, or on the mailing date of this Advisory Action, whichever is later. In no event, however, will the statutory period for the response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date of the originally set shortened statutory period for response or as set forth in b) above.

- ☒ Appellant's Brief is due two months from the date of the Notice of Appeal filed on Jul 12, 1999 (or within any period for response set forth above, whichever is later). See 37 CFR 1.191(d) and 37 CFR 1.192(a).

Applicant's response to the final rejection, filed on Jul 12, 1999 has been considered with the following effect, but is NOT deemed to place the application in condition for allowance:

- ☒ The proposed amendment(s):

☐ will be entered upon filing of a Notice of Appeal and an Appeal Brief.

- ☒ will not be entered because:

- ☒ they raise new issues that would require further consideration and/or search. (See note below).
- ☒ they raise the issue of new matter. (See note below).
- ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
- ☐ they present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: see attachment

- ☐ Applicant's response has overcome the following rejection(s):

- ☐ Newly proposed or amended claims \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment cancelling the non-allowable claims.

- ☒ The affidavit, exhibit or request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
see attachment

- ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

- ☒ For purposes of Appeal, the status of the claims is as follows (see attached written explanation, if any):

Claims allowed: none

Claims objected to: none

Claims rejected: 27-33 and 37-39; claims 1-26 and 34-36 are non-elected and withdrawn from consideration.

- ☐ The proposed drawing correction filed on \_\_\_\_\_ ☐ has ☐ has not been approved by the Examiner.
- ☐ Note the attached Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_.
- ☐ Other

**IRENE MARX  
PRIMARY EXAMINER  
ART UNIT 1651**

Note:

The proposed amendment raises new issues that would require further consideration and/or search with respect to the proposed multiple dependency of claim 33 on multiple dependent claim 31. New issues that would require further consideration and/or search are raised in claim 1 by the addition of the phrase "a porous free flowing", by the replacement of comprises with "consists essentially of" and the phrase "the extrudate having a structure that allows a solvent access, via the pores, to the dead cells...", and the phrase "in order to isolate or extract a desired compound therefrom", including new issues under 35 U.S.C § 112, of indefiniteness and antecedent basis for instance, and of new matter. New issues that would require further consideration and/or search are raised in claim 28 by the addition of a dry matter proviso for the biomass and the addition of functional language regarding structural properties of a composition comprising dead fungal cells in terms of "allows", including new issues under 35 U.S.C § 112 and of new matter. New issues that would require further consideration and/or search are raised in claim 30 by the characterization of the granules as "porous" and by the addition of a dry matter proviso for the biomass and the addition of functional language regarding structural properties of a composition comprising dead fungal cells in terms of "allows", including new issues under 35 U.S.C § 112 and of new matter.

Regarding claim 36, this claim should properly have been included in the Group I, since it also drawn to a process of using a granular composition to isolate a compound therefrom, which is classified in Class 435, subclass 41+, for example. Any inconvenience is regretted.

Applicants' arguments have been fully considered but they are not deemed to be persuasive.

Regarding the implied support for "dead", it is recognized that pasteurization will kill most organisms, as noted in page 11, second full paragraph of the specification. However, the basis or support for "consists essentially of dead fungi or dead fungal cells" as now proposed in claim 27 is not clear. Therefore, this material raises the issue of new matter.

Applicants arguments regarding the Rhodes reference are puzzling to the extent that they indicate that the dried, extruded granules as claimed pertains to "an extruded intact fungal cell".

The claim designated invention is not directed to extruded intact fungal cells are alleged. Moreover, the dried, extruded granules of Rhodes are reasonably likely to comprise at least a few dead fungal cells therein.

Regarding the absence of compounds such as  $\beta$ -carotene or vitamin B<sub>12</sub> from spores, it is emphasized these are not claim designated compounds. Which compounds are "desired" is open to interpretation and desired proteins or factors may be obtained from the composition of Rhodes.

It is noted that arguments pertaining to proposed limitations and to the advantages thereof are directed to claims that are not entered (Response pages 4-5).

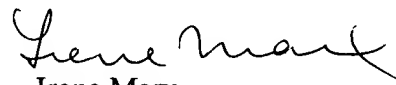
With respect to the contended differences in the intended use of the composition discussed in the references, applicant is reminded that all the references are directed to fungal cells and to the drying thereof, which is clearly directed to the filed of endeavor of the claims. The claims of record are similarly directed to granular particles of biomass. Inasmuch as each of Rhodes *et al.* and Huang disclose fungal biomass which comprises dried, extruded granules their teachings are deemed to very eminently relevant to the invention as claimed. There references are clearly directed to the same field of endeavor, i.e., dried fungal biomass granules or extruded materials..

Therefore the rejections are deemed proper and are adhered to.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Irene Marx whose telephone number is (703) 308-2922.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn, can be reached on (703) 308-4743. The appropriate fax phone number for the organization where this application or proceeding is assigned is (703) 308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196 .

  
Irene Marx  
Primary Examiner  
Art Unit 1651